

# **EXHIBIT V**

# ORIGINAL

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UNITED STATES DISTRICT COURT

EASTER DISTRICT OF NEW YORK

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RASHIKA N. HETTIARACHCHI,

Plaintiff,

- against -

COUNTY OF SUFFOLK, SUFFOLK COUNTY DISTRICT  
ATTORNEY'S OFFICE, DISTRICT ATTORNEY, THOMAS J.  
SPOTA, in his individual and official capacity,  
CHIEF DISTRICT ATTORNEY, EMILY CONSTANT, in her  
individual and official capacity, DIVISION CHIEF  
EDWARD G. HEILIG, in his individual and official  
capacity, BUREAU CHIEF EDWARD JABLONSKI, in his  
individual and official capacity, BUREAU CHIEF  
MAUREEN McCORMACK, in her individual and official  
capacity, BUREAU CHIEF KERIANN KELLY, in her  
individual and official capacity, DEPUTY BUREAU  
CHIEF NANCY CLIFFORD, in her individual and  
official capacity and DEPUTY BUREAU CHIEF JAMES  
CHALIFOUX, in his individual and official  
capacity,

Defendants.

Docket No.: CV2:14-06731-DRH-ARL

-----x

556 Peninsula Boulevard  
Hempstead, New York

THOMAS J. SPOTA

January 12, 2018  
2:10 p.m.

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Deposition of the Defendant, THOMAS  
J. SPOTA, pursuant to Notice, before Deborah  
Rozea, RPR, a Notary Public of the State of  
New York.

## A P P E A R A N C E S:

LAW OFFICES of FREDERICK K. BREWINGTON

Attorneys for Plaintiff

556 Peninsula Boulevard

Hempstead, New York 11550

BY: FREDERICK K. BREWINGTON, ESQ.

PUTNEY, TWOMBLY, HALL &amp; HIRSON, LLP

Attorneys for Defendants

521 Fifth Avenue

New York, New York 10175

BY: MARY ELLEN DONNELLY, ESQ.

1  
2 IT IS HEREBY STIPULATED AND  
3 AGREED by and between the attorneys  
4 for the respective parties herein,  
5 that the filing, sealing and  
6 certification of the within deposition  
7 be waived.

8 IT IS FURTHER STIPULATED AND  
9 AGREED that all objections, except  
10 as to the form of the question,  
11 shall be reserved to the time of the  
12 trial.

13 IT IS FURTHER STIPULATED AND  
14 AGREED that the within deposition  
15 may be sworn to and signed before  
16 any officer authorized to administer an  
17 oath with the same force and effect as  
18 if signed and sworn to before the  
19 Court.

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1  
2 THOMAS J. SPOTA, called as a  
3 witness, having been duly sworn by a  
4 Notary Public, was examined and  
5 testified as follows:

6 EXAMINATION BY

7 MR. BREWINGTON:

8 Q. Please state your full name for  
9 the record.

10 A. Thomas J. Spota.

11 Q. What is your address?

12 A. Little Harbor Road, Mt. Sinai,  
13 New York 11766.

14 Q. Mr. Spota, as you probably know  
15 I'm an attorney representing Rashika  
16 Hettiarachi in an action where you're named as  
17 a Defendant --

18 A. Yes.

19 Q. -- as well as other individuals  
20 and entities.

21 I'm going to be asking you some  
22 questions today concerning that case, and I'm  
23 also going to be asking you some questions  
24 relating to any information that you may have  
25 that is pertinent to the facts and information

1  
2 in that case.

3 If at any point you don't  
4 understand the question as I pose it, let me  
5 know that, and I'll try and rephrase it. And  
6 if you don't hear the question even though  
7 we're in fairly close quarters, let me know  
8 that as well, and I will try and speak up.

9 If we need to we can have the  
10 question read back. We have an expert court  
11 reporter here who is taking down everything  
12 that's said.

13 Along those lines, and I probably  
14 don't need to tell you, but I'm going to need  
15 you to respond verbally to each of the  
16 questions as they're posed --

17 A. Yes.

18 Q. -- so that we have a clear record  
19 as to what your response is.

20 I'm going to ask you to make sure  
21 that you have the question squarely before you  
22 before you respond to a question.

23 All right?

24 A. Yes.

25 Q. And if you need the time to speak

1  
2 to your attorney who's seated to your right or  
3 for any other purpose, a comfort break or  
4 otherwise, please let me know, and I'll try  
5 and abide by that as quickly as I can.

6 If there's a question that's  
7 pending, I'm going to ask that you try and get  
8 a question and answer on the record, if  
9 possible. If we can't do that, Ms. Donnelley  
10 and I will work that out, and figure out how  
11 to do that.

12 A. Okay.

13 Q. All right?

14 A. Sure.

15 Q. Now, sir, what was your last  
16 employment, please?

17 A. The Suffolk County District  
18 Attorney's Office.

19 Q. And currently is there any  
20 employment which is ongoing?

21 A. No.

22 They call it retirement.

23 Q. Yes.

24 A. Although I have had some offers.  
25 I may do some part-time, small work.



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Q. Okay.

A. I'm not sure yet.

Q. But you actually retired from the  
District Attorney's Office?

A. Yes.

From the -- yes.

Q. From the County?

A. From the County of Suffolk. Yes.

Q. And the last position that you  
held for the record, please?

A. District Attorney.

Q. How long did you hold that  
position?

A. Sixteen years.

Q. And was that an elected position?

A. Yes.

Q. So, would it be accurate to say  
you were elected in 2001?

A. November of 2001.

Q. And can you tell us, please, what  
is your highest level of education?

A. Law school and some graduate law  
school, NYU, interrupted by military service.

Q. Okay.

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So, is your degree a juris  
doctor?

A. Yes.

Q. And from what institution is  
that?

A. St. John's University.

Q. And when did you achieve that  
goal?

A. 1966.

Q. And after you received your juris  
doctor, you said you got some additional  
formal training in the area of law; is that  
correct?

A. Yes.

Q. What was that, and where was  
that?

A. It was New York University School  
of Law.

It was very short. It was  
probably -- I'm trying to recall. Maybe a  
semester and a half or so.

Q. And was that in an LLM program?

A. Yes.

Q. And you said it was interrupted.

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What was it interrupted by?

A. The United States Marine Corps.

Q. They pull rank; don't they?

A. Yes, they do.

Q. And were you engaged in active service in the United States Marine Corps?

A. Yes.

Q. For what period of time, please?

A. Well, it was originally the reserves six months, but I did additional time.

We were activated. So, I just couldn't tell you altogether.

Q. Approximately how long?

A. I don't think more than a year. Even less than that I would say.

Q. Okay.

And what was the highest rank you achieved in the --

A. Corporal.

Q. -- in the Marines?

A. Corporal.

Q. After your stint in the Marines, did you enter the workforce?

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A. Yes.

Q. In what way?

A. I was in private practice with an attorney in Hicksville, Robert Corcoran, C-O-R-C-O-R-A-N.

Q. And how long were you in private practice?

A. I was in private practice until 19 -- the end of '71.

Q. So, approximately five years?

A. Well, no because I was in the service.

Q. Okay.

A. Probably about four years.

Q. Okay.

A. Three and a half to four years.

Q. And what type of law did you practice?

A. It was a variety. Mostly Mr. Corcoran's practice was primarily real estate and SLA work.

Q. And just for the record, SLA, what does that stand for?

A. The State Liquor Authority.

1  
2 Q. That's when they actually had a  
3 part in some of the Courts in the City --

4 A. Yes.

5 Q. -- they still had those things.

6 A. Yes, that's right.

7 Q. And after working with  
8 Mr. Corcoran, did you change jobs?

9 A. Yes.

10 Q. And where did you go?

11 A. To the Suffolk County --

12 Well, for a very short period of  
13 time I was with the Town Attorney's Office for  
14 the Town of North Hempstead.

15 Q. And then?

16 A. The Suffolk DA's Office.

17 Q. And after getting to the Suffolk  
18 County District Attorney's Office, did you  
19 ever leave employment there?

20 A. Yes.

21 Q. Okay.

22 How long were you there after you  
23 came from North Hempstead?

24 A. Well, okay.

25 So, it was the very end of '71

until 1980, March of '82, and then they called me back to try some additional murder cases.

Q. Okay.

A. Which took about another year.

Q. Okay.

So, in 1982, did you go back out into private practice?

A. Yes.

Q. And were you in practice alone or with anyone else?

A. Gerard Sullivan initially.

Q. And then did you go back to the DA's Office?

A. Yes, they asked me to come back to handle two hom -- murder cases.

Q. And then after handling those two murder cases, did your employment change?

A. No.

Q. Did you remain in the DA's Office?

A. No.

I was still in private practice, but they were paying me as a special prosecutor.

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Q. Oh, I see.

A. Yes.

Q. So, it was almost simultaneous  
when you were --

A. Yes.

Q. -- working with Mr. Sullivan?

A. Yes.

I'm sorry.

Q. After you tried those two cases,  
did you remain in private practice?

A. Yes, for a period of time.

Q. And how long did you remain in  
private practice?

A. Until November of 2001.

Q. And what happened in November of  
2001?

A. That's when I ran for office, and  
was elected.

Q. At any time while you were  
working in the DA's Office, did you serve in  
the capacity as a supervisor?

A. Yes.

Q. In what capacity and when?

A. I was a Deputy Bureau Chief. I

don't recall the year.

Q. Okay.

A. I was a Bureau Chief.

And I was the Chief Trial  
Prosecutor.

This is during my initial --

Q. Yes.

A. -- period. Yes.

Q. At any time before you were  
elected --

A. Yes.

Q. -- to the position of the  
District Attorney of Suffolk County?

A. Yes.

Q. That's what you were referring  
to?

A. Yes.

Q. And the Deputy Bureau Chief, were  
you the Deputy Bureau Chief over one or more  
Bureaus?

A. I was the Deputy Bureau Chief of  
one Bureau.

Q. What Bureau was that?

A. It was the Hom -- we called it



the Major Crime Bureau.

Q. Major Crimes.

A. No, I'm sorry, Major Offense Bureau. I'm sorry.

Q. Major Offense.

A. It was only homicides though.

Q. And did you become Bureau Chief of that same unit?

A. Yes.

Q. And then you were a Chief Trial --

A. Prosecutor.

Q. -- Prosecutor. Was that different from being a Bureau Chief?

A. Yes.

Q. And was that for a different time period?

A. No, I was the Chief Trial Prosecutor, and the Bureau Chief at the same time.

Q. Was that at Major Offenses as well?

A. Well, no, that would have

1  
2 incorporated the Trial Bureaus.

3 Oh, virtually all the Bureaus in  
4 the Office.

5 Q. Okay.

6 A. Other than Rackets Bureau.

7 You know, there was one other  
8 Bureau, but I can't think of what it was  
9 though.

10 Q. Okay.

11 If you want to, we'll leave a  
12 space, and if you remember, and you want to  
13 put it in.

14 A. Yeah, sure.

15 Q. Is that okay?

16 A. Yeah, sure.

17 Q. During your --

18 A. Oh, it was Narcotics.

19 Q. So, that was the other exception?

20 A. Yes.

21 Q. So, it would be Rackets and  
22 Narcotics?

23 A. And Narcotics, yes.

24 Q. So, we don't need to leave a  
25 line. Very well.

Can you tell us, sir, during the time that you served as Deputy Bureau Chief, Bureau Chief and Chief Trial --

A. Prosecutor.

Q. -- Prosecutor, did you receive training in any Human Resources area?

A. I don't think so. Not that I can recall anyway.

Q. I'm going to ask you: Do you know the name Rashika Hettiarachi?

A. Yes.

Q. And how do you know that name?

A. She was employed by the Office for a period of time.

Q. Okay.

A. As an Assistant District Attorney.

Q. And were you involved in her hiring directly?

A. No.

Q. Did you have occasion during her employment to be involved in evaluating her work at all?

A. Not really. No, the answer would

1  
2 be no.

3 Q. And during her tenure with your  
4 Office, did you have any direct contact with  
5 her; that being in relation to her work that  
6 she performed in the Office?

7 A. Yes.

8 Q. And what was that, please?

9 A. Well, when she was transferred  
10 from the District Court Bureau she went to the  
11 Case Advisory Bureau. I would have had some  
12 interaction with her at that point.

13 And then certainly when she was  
14 transferred from the Case Advisory Bureau to  
15 Economic Crime Bureau I certainly would have  
16 had interaction with her at that point.

17 And that's basically the  
18 interaction that I had directly with her.

19 Q. Okay.

20 And I was hearing, you said you  
21 would have had interaction.

22 Let me ask you: Do you have any  
23 specific recollection of those interactions?

24 A. The only one is the Case Advisory  
25 Bureau, the promotion to the Economic Crime

Bureau.

Q. And do you recall when that was,  
that you had --

A. No.

Q. -- that interaction?

A. No.

Q. But you do recall, have some  
memory of that; is that accurate?

A. I have a vague memory because  
there were so many Assistants.

Q. Sure.

A. I have a -- because I would meet  
with them to tell them that they were being  
promoted.

Q. Okay.

And do you have any specific  
recollections as to your interaction with  
Miss Hettiarachi relating to her movement from  
Case Advisory to Economics?

A. Yes.

Q. What do you recall?

A. Well, that's what I was referring  
to before.

Q. Okay.

1  
2 A. Oh, just that I would meet with  
3 her, and probably the Chief Assistant was with  
4 me to speak to her, to tell her that she was  
5 being promoted, and that she was going to a  
6 particular Bureau.

7 Q. And that would be who? Who would  
8 be the Chief Assistant?

9 A. Emily -- let's see now.

10 Q. Constant?

11 A. It would depend upon the year.  
12 My first Chief Assistant was John  
13 Buonora, and then Emily Constant.

14 So, I can't tell you because I  
15 don't recall what year that she was  
16 transferred.

17 Q. Okay.

18 Maybe as we go through some of  
19 the documents if that helps you can tell us.

20 A. Oh, yeah, sure.

21 Q. And did you have occasion to  
22 speak with Miss Hettiarachi at the end of her  
23 work relationship with the District Attorney's  
24 Office?

25 A. No.

1  
2 Q. Okay. I'm going to go through  
3 some documents with you, if that's all right,  
4 and ask you some questions relating to those,  
5 and I'll try not to belabor it. We've gotten  
6 some other testimony from other folks  
7 concerning these documents. So, we'll see if  
8 we can try, and move along in sequence.

9 Okay?

10 A. Sure.

11 MR. BREWINGTON: I'm going to ask  
12 you to take a look at what's been  
13 previously marked as Constant 4, and  
14 we'll make this Spota 1, please.

15 (Plaintiff's Spota Exhibit 1,  
16 copy of two-page document, first page  
17 being a letter dated April 25, 2006 from  
18 Jerry W. Matejka to Tom Spota and second  
19 page being an Inter-Office  
20 Communication, Bates Stamps D0140 and  
21 D0141, marked for identification.)

22 (Handing.)

23 MS. DONNELLY: You take the  
24 official one.

25 Q. This is a two-page document. It

has Bates Stamps Numbers D0140 and D0141.

Let me just ask you: Do you have any recollection of ever having received this document back in or around 2006?

A. No.

Q. Okay.

And would it be unusual for you to receive letters concerning your Assistants when people thought that they were either doing a good job or maybe not doing a good job?

A. Would it be unusual?

Q. Unusual.

A. For me to receive those letters?

Q. Yes.

A. I would receive them from time to time, sure.

I can't say it's unusual.

Q. And with regard to the second page, it appears to be a memo from Mr. John Buonora, Chief Assistant District Attorney to Miss Hettiarachi.

In or about May of 2006 was he your Chief Assistant?



1  
2 A. Yes, he was.

3 Q. So, we can set that document  
4 right there (indicating).

5 And in your Office, do you know  
6 were there any programs that dealt with loan  
7 forgiveness of students or people concerning  
8 their student loans?

9 A. We did not have such a program.

10 The State -- the DA's Office did  
11 not have that program.

12 MR. BREWINGTON: Let me ask you  
13 to take a look at this document which is  
14 marked as Constant 5. We'll will make  
15 this Spota 2 for identification.

16 (Plaintiff's Spota Exhibit 2,  
17 copy of letter dated March 8, 2011 from  
18 Diane Stankewicz, Bates Stamp Number  
19 D0092, marked for identification.)

20 (Handing.)

21 Q. First let me ask you: Diane  
22 Stankewicz --

23 A. Yes.

24 Q. -- did I pronounce that  
25 correctly?

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A. Yes.

Q. Do you know who she was or is?

A. Yes.

Q. And who was that?

A. She worked in our Administrative, Administration Office, and she was the head of the office, of the Administration Office.

Q. And this appears to be a letter written from your Office in or about 2011, March 8th, 2011 to the New York Higher Education Services Corporation.

A. Uh-huh.

Q. And it has in the re, "District Attorney Loan Forgiveness Program."

Specifically, were you aware of any such program as it's entitled there?

A. Yes.

Q. Can you please describe what that was?

A. Well, it's a program that is not -- I don't know why it says District Attorney Loan Forgiveness Program. I can't account for that, but it's a State program, and it's administered by the State, and it's for

1 students who -- this is my recollection --  
2 complete a period of time, service within the  
3 Office, and some portion or all, I don't know,  
4 of their loan is forgiven.  
5

6 Q. Okay, okay.

7 And were you aware of that  
8 program working for the benefit of some of  
9 your Assistants at some point?

10 A. I was aware that we had -- that  
11 we didn't, but the State had such a program  
12 and some of our stu -- I'm sorry, excuse me,  
13 our employees had taken advantage of it.

14 Q. Very well.

15 And other than how you described  
16 it, do you have any other formal knowledge  
17 concerning that program?

18 A. No.

19 Q. You can place that there.

20 MR. BREWINGTON: I'm going to  
21 show you what's going to be marked as  
22 Spota 3 for identification, previously  
23 identified as Constant 6.

24 (Plaintiff's Spota Exhibit 3,  
25 copy of document entitled Inter-Office

Communication Suffolk County District  
Attorney's Office, dated October 2,  
2012, Bates Stamp Number D0080, marked  
for identification.)

(Hanging.)

Q. Sir, do you have that document  
before you?

A. Yes, I do.

MS. DONNELLY: You take the  
official one.

Q. And this document that has the  
Bates Stamp Number of D0080 is one that's  
entitled, "Subject: Transfers to all Bureaus  
Chiefs and Unit Heads from Thomas J. Spota,  
District Attorney."

First of all, are you familiar  
with this document?

A. Well, I don't recall it  
particularly, but yes.

Q. And are you familiar with this  
form of document?

A. Yes.

Q. And how so?

A. Well, it's, it's pretty much our

1  
2 standard document when we had transfers within  
3 the Office.

4 Q. And this document has a date of  
5 October 2nd, 2012.

6 A. Yes.

7 Q. As the date.

8 A. Yes.

9 Q. What was the process by which  
10 people would be transferred? Can you just  
11 tell me, please, how did it come about that  
12 decisions would be made that people would be  
13 transferred?

14 A. Well, it varied from Bureau to  
15 Bureau. Essentially it would be a decision  
16 that was made in the lower, in the District  
17 Court Bureau and the Case Advisory Bureau for  
18 the most part when we had an opening in a  
19 Trial Bureau or an Investigative Bureau.

20 I would speak to the Bureau  
21 Chiefs and/or Deputy Bureau Chiefs of the  
22 District Court and/or Case Advisory Bureau for  
23 their recommendations.

24 Q. And then --

25 A. Yes. If I may.

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Q. I'm sorry.

Yes.

A. The other Bureaus I was far more familiar with the people in those Trial Bureaus and the Investigative Bureaus.

Well, I spoke to the Bureau Chiefs, Deputy Bureau Chiefs, supervisors. I had far more familiarity with those Assistants.

Q. And this document has as the. I guess, as the fourth person down being Miss Hettiarachi.

Do you see that?

A. Yes.

Q. The Case Advisory Bureau, is that a Trial Bureau?

A. No.

Q. And is there normally a track that is followed to get to the Case Advisory Bureau?

A. The District Court Bureau --

Q. Okay.

A. -- to the Case Advisory Bureau is the normal track.

1  
2 Q. And the going from the Case  
3 Advisory Bureau to the Economic Crimes Bureau  
4 -- obviously it's a transfer here, but is that  
5 a promotion?

6 A. Yes.

7 Q. And is the Economic Crimes Bureau  
8 a Trial Bureau?

9 A. Well, it's more -- it's an  
10 Investigative Bureau, but they do trials.

11 Q. Okay.

12 A. They try the cases that they  
13 investigate, and decide if they're worthy of  
14 prosecution.

15 Q. And with regard to this  
16 particular document, you indicated that you're  
17 aware or you at least know the form, but you  
18 have no particular recollection of this  
19 particular document?

20 A. No.

21 Q. And were you aware that  
22 Miss Hettiarachi was transferred from the Case  
23 Advisory Bureau to the Economic Crimes Bureau  
24 in or about the time that this memo was dated?

25 A. No, I was not.

I am now but...

Q. Who prepares this?

A. This -- October -- probably the Chief Assistant.

Q. Would that be Miss Constant at that time?

A. Yes.

MR. BREWINGTON: I'm going to ask you to take a look at this letter which is dated January 8th, 2013 from Miss Constant to Miss Hettiarachi, and we'll make this please Spota 4.

(Plaintiff's Spota Exhibit 4, copy of two-page letter dated January 8, 2013, marked for identification.)

(Handing.)

Q. Have you had a chance to look at that letter?

A. Yes.

Q. First, have you ever seen this letter before; that you can recall?

A. I don't recall.

Q. And do you have any recollection of learning in or about 2012 or 2013 that



1  
2 Miss Hettiarachi was out on any type of  
3 medical leave?

4 A. I have a recollection of that.

5 Q. What is your recollection,  
6 please?

7 A. I believe Miss Constant -- I  
8 think it was Miss Constant -- somebody told me  
9 that she had been out on a leave.

10 Q. Okay.

11 Did you have any direct  
12 involvement in any decisions made relative to  
13 her medical leave?

14 A. No.

15 Q. And were you -- other than being  
16 generally consulted by Miss Constant or  
17 someone else -- do you have any recollection  
18 of involving yourself in decisions made about  
19 her --

20 MS. DONNELLY: Go ahead. Finish.

21 I just want him to pause before  
22 he answers your question.

23 Q. -- made about her leave?

24 MS. DONNELLY: Objection.

25 You can answer.

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A. I honestly don't recall.

I recall Miss Constant telling me that -- perhaps it was by -- I don't know how she received the indication that she was out on a medical leave, but that she was going to return.

Q. Okay.

And was there a policy that you were aware of concerning people coming back from medical leave having to obtain doctor's notes; if you know?

A. A doctor's note?

Q. Yes.

A. I'm not familiar with that.

A doctor's note about what?

Q. In any form or fashion that you're aware of.

A. Oh, the only thing that I do know is that we had -- it's kind of in here (indicating) that --

Where is it? Let me see.

Yes, "Prior to your return you must provide this Office with a letter from a medical professional involved in your

1 treatment that indicates that you're capable  
2 of performing the essential functions of your  
3 position as an Assistant District Attorney."  
4

5 That's a policy that the County  
6 requires us to notify the Assistant. That's  
7 it.

8 Q. Okay. All right.

9 And was that something that you  
10 were familiar with that occurred without your  
11 input?

12 MS. DONNELLY: Objection.

13 You can answer.

14 Q. That being, the request for a  
15 medical letter or a medical note?

16 MS. DONNELLY: Objection.

17 You can answer.

18 A. I thought I had said it's a  
19 County policy. We have to do that.

20 That's my understanding.

21 Q. All right. You can place that  
22 there.

23 MR. BREWINGTON: Let's just do  
24 this so they can stay together.

25 This is a letter dated January

10th, 2013 previously identified as  
Constant 9. I will ask that we can mark  
this as Spota 5.

(Plaintiff's Spota Exhibit 5,  
copy of letter dated January 10, 2013,  
marked for identification.)

(Hanging.)

A. Okay.

Q. Have you had a chance to look at  
that?

A. Yes.

Q. Have you ever seen this one  
before?

A. No.

Q. With regard to this letter -- as  
I did with the other letters -- would this  
type of letter be something that would be sent  
out without you knowing about it?

A. I may have known about it. I  
have absolutely no recollection of it.

Q. Okay.

A. I don't remember ever seeing  
this. I could have, but I don't recall.

Q. You can place that to the side,

1  
2 please.

3 At some point I think you talked  
4 about different Bureaus within the office.

5 A. Yes.

6 Q. The ECB Bureau, what was that?

7 A. Economic Crime Bureau.

8 Q. And that was a Bureau to which  
9 Miss Hettiarachi I think we had established  
10 was being transferred.

11 A. Yes.

12 MR. BREWINGTON: Let me ask you  
13 if you can just take a look at this  
14 document which was previously identified  
15 as McCormack 1 for identification, and  
16 we will make this Spota 6, please.

17 (Plaintiff's Spota Exhibit 6,  
18 copy of e-mail dated November 13, 2012,  
19 marked for identification.)

20 (Hanging.)

21 A. Okay.

22 Q. First, have you seen this  
23 document before?

24 A. No.

25 Q. Okay.

1  
2 Do you have any recollection of  
3 any issues relating to the subject which is  
4 here, which is "Horrible ECB indictment  
5 statistics" --

6 A. I would not --

7 Q. In or about November of 2012?

8 A. I would not have classified them  
9 as horrible, but there was a time -- I can't  
10 say if it was this period of time when --

11 I was concerned about the fact  
12 that were quite a number of open indictments  
13 for that particular Bureau. They weren't  
14 moving cases rapidly.

15 And I also was critical of their  
16 investigations, the manner in which they were  
17 investigating some case, the length of time  
18 that they were investigating them.

19 I have to presume that that's  
20 what this was addressing.

21 Q. And with regard to your memory,  
22 the issues that are raised in this memo, do  
23 you have any specific recollection of speaking  
24 to Miss McCormack or anyone else in the  
25 District Attorney's Office about the content

1  
2 of this memo?

3 MS. DONNELLY: Objection.

4 You can answer.

5 A. I would not have spoken to her  
6 about the content of this memo. I personally  
7 would not have.

8 Q. And did you ever hear from anyone  
9 that there was any concern with regard to  
10 Miss Hettiarachi's production in this Bureau;  
11 that being the Economic Crime Bureau?

12 A. Could I just go back to this  
13 (indicating)?

14 Q. Sure.  
15 You're looking back at a couple  
16 of the other documents.

17 A. Yeah.

18 Could you just repeat the  
19 question?

20 MR. BREWINGTON: Sure. We can  
21 have it read back.

22 (Record read.)

23 A. I have no specific recollection,  
24 but she was only in the Bureau October 22nd  
25 until -- it was only three or four weeks.

1  
2 So, I don't know how she could  
3 have been the subject of whatever  
4 Miss McCormack was talking about here. As a  
5 matter of fact, it says in here that, "We'll  
6 give Rashika a pass." I presume that means  
7 because she was just there a very short period  
8 of time.

9 Q. She was the new kid on the block?

10 A. Yeah.

11 Q. Okay. Very well.

12 And do you know if  
13 Miss Hettiarachi was transferred from the  
14 Economic Crime Bureau to the Major Crime  
15 Bureau at some point?

16 A. Yes.

17 MR. BREWINGTON: Let me ask you  
18 to take a look at what we'll mark as  
19 Spota 7, previously identified as  
20 Clifford 2.

21 (Plaintiff's Spota 7, copy of  
22 document entitled Inter-Office  
23 Communication, dated February 21st,  
24 2013, Bates Stamp Number  
25 HETTIARACHCHI00118, marked for



identification.)

(Hanging.)

Q. Have you had a chance to peruse that document, sir?

A. Yes.

Q. And this has a Bates Stamp Number at the bottom HETTIARACHCHI00118.

And this form of document was that once again the type of document that would be used for identifying people being transferred from one Bureau to another?

A. I can't tell you from this because it's all blacked out.

Q. I don't have a lot of control with that.

A. I don't know.

Q. Okay.

When there would be these type of promotions and transfers in February of 2013, would that be something that you would prepare or it would be prepared for you?

A. For the most part it would be prepared for me.

Q. And do you have any recollection

as to this particular document?

A. No.

Q. Okay.

And in or about February of 2013, February 21st of 2013, this indicates that ADA Rashika Hettiarachi is transferred from the Economic Crime Bureau to the Major Crime Bureau.

Do you see that?

A. Yes.

Q. Is that a promotion?

A. No, that's a lateral move.

Q. When you say "a lateral move" what do you mean?

A. Simply what the term implies. It's a move from one Bureau to another Bureau.

Q. And based on the documents that we just looked at, that would be a move of Miss Hettiarachi from the Economic Crime Bureau which she had just gone to in October of 2012.

Is that approximately right?

A. Well, from these documents, yes.

Q. Do you know what brought about

that transfer in that short period of time?

A. The only recollection I have is that she requested to go to the Major Crime Bureau.

I -- my vague recollection is that I had asked her to go to the Economic Crime Bureau because of some -- there was a need for additional people in the Economic Crime Bureau. I don't remember why. It could be people were out sick, maternity leave. Perhaps I promoted somebody from that Bureau to another Bureau, and I needed somebody in the interim.

Q. Do you have any recollection of speaking to her about why you were sending her to the Economic Crime Bureau initially?

A. Oh, sure.

Q. Okay.

A. Do I have a recollection?

Q. Yes.

A. I can't say I have a specific recollection.

I certainly would have spoken to her. If you recall, I said initially I meet

1  
2 people in the Case Advisory Bureau. I speak  
3 to them, congratulate them, them being  
4 promoted, and I certainly would have told her  
5 she's going to the Economic Crime Bureau.

6 Whether I said it was on an  
7 interim basis or not, I just don't recall.

8 Q. Okay. You can place that down.

9 And in the Economic Crime Bureau,  
10 was the supervisor in or around late 2012 and  
11 early 2013 Mr. Jablonski?

12 A. In which Bureau?

13 Q. That being the Economic Crime  
14 Bureau.

15 A. No.

16 Q. Where was he the supervisor?

17 A. Case Advisory Bureau.

18 Q. That's right. I'm sorry.

19 MR. BREWINGTON: Let me ask you  
20 if you have ever seen this evaluation  
21 which bears a date on the second page of  
22 5/20/13.

23 And we'll mark it as Spota 8 for  
24 identification.

25 (Plaintiff's Spota Exhibit 8,

copy of four-page document, entitled  
Suffolk County District Attorney's  
Office, Assistant District Attorney  
Evaluation, Bates Stamp D0301 through  
D0304, marked for identification.)

(Hanging.)

A. I've read it.

Q. Okay.

Mr. Spota, have you ever seen  
this document before?

A. I don't recall.

Q. Was there a regular evaluation, a  
written evaluation process, in place during  
your tenure as the District Attorney?

MS. DONNELLY: Objection.

You can answer.

A. At a point, yes.

Q. When you say "at a point", for  
what period of time if you can tell me?

A. I don't recall.

Q. For approximately how long?

A. I just don't recall.

Q. When you say "at a point", what  
do you mean, "at a point"?

1  
2 A. Well, it started -- the -- one of  
3 the Chiefs, Edward Heilig, instituted an  
4 evaluation system. I think it was this  
5 evaluation. I'm trying to think.

6 For the District Court Bureau  
7 personnel they have a three-year commitment.  
8 This is my recollection. I hope I'm accurate.

9 And he showed me the form, and I  
10 liked the form, and I said well, why don't we  
11 expand it to everybody in the Office.

12 Q. Okay.

13 A. But it didn't start for, for -- I  
14 was in the Office quite a while before we  
15 decided to do that.

16 Q. That's your best recollection?

17 A. Yeah.

18 Q. Now, I'm going to point out to  
19 you a couple dates on this document.

20 A. Yes.

21 Q. This obviously in the name, it  
22 says ADA name, Rashika Hettiarachi, and it  
23 says, "Bureau start date 10/22/10."

24 Do you see that? On the  
25 right-hand side.

1  
2  
3  
4  
5  
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21  
22  
23  
24  
25

A. Yes.

Q. And then it says, "Date of  
evaluation 2/26/13."

Do you see that?

A. Yes.

Q. First of all, what does this  
evaluation deal with? What Bureau is it  
dealing with?

A. Well, to -- from this evaluation  
it appears it's dealing with a period of time  
when Miss Hettiarachi was in the Case Advisory  
Bureau, and then the Economic Crime Bureau.

Q. And in February, and I'm going to  
ask you -- do you need to look at some other  
documents?

A. I just looked at them.

Q. I'm just dealing with those two  
dates first.

So, it says, "Date of evaluation  
2/26/13."

A. Right.

Q. I will ask you to turn to the  
second page.

Do you know when this document

1  
2 was actually presented to Miss Hettiarachi?

3 A. No.

4 Q. Do you see on the second page  
5 where it says 5/20 of '13?

6 A. Yes.

7 Q. Do you know where  
8 Miss Hettiarachi was, what Bureau she was in  
9 on 5/20 of 2013?

10 A. Well, from this document, what is  
11 this, Spota 7, it appears that she would have  
12 been in the Major Crime Bureau.

13 Q. And this evaluation that's being  
14 provided in or about May of 2013, what was the  
15 purpose of providing an evaluation for a  
16 Bureau that she was no longer in; if you  
17 recall?

18 MS. DONNELLY: Objection.

19 You can answer.

20 A. I really can't answer that.  
21 That's a question better put to Mr. Heilig,  
22 but I can only assume because she --

23 They normally were in a two-year  
24 period of time. More than likely it's because  
25 when this evaluation was being done it covered



1  
2 the period of time that she was in the Case  
3 Advisory Bureau and the Economic Crime Bureau,  
4 but had since been transferred to the Major  
5 Crime Bureau.

6 So, in other words, what I'm  
7 saying is she was probably in the Major Crime  
8 Bureau at the time when the evaluation was  
9 being done, but it covered the period that she  
10 was in both the Case Advisory Bureau and the  
11 Economic Crime Bureau.

12 I hope that makes sense.

13 Q. There are more documents coming.

14 A. Okay.

15 Q. So, we'll take a look at those.

16 A. Okay.

17 Q. But with regard to this document,  
18 would it be accurate to say that you had no  
19 direct involvement in the determinations made  
20 about her performance as it's identified on  
21 this document?

22 A. No, this would have been done by  
23 the Bureau Chief. It looks like it's  
24 Jablonski.

25 Q. You see where it says, "Did not

1 meet with ADA."

2 A. Yes.

3 Q. Was there a process that had been  
4 agreed to so that when evaluations were done  
5 the Assistant District Attorneys who were  
6 being evaluated would be spoken to, and would  
7 meet?  
8

9 A. Yes.

10 Q. Where it says, "Did not meet with  
11 ADA."

12 Did you ever come to learn that  
13 evaluations were being given out without ADAs  
14 being met with or spoken to about their  
15 evaluation?

16 MS. DONNELLY: Objection.

17 You can answer.

18 A. Well, the only --

19 I can't recall this particular  
20 document.

21 Almost always, to my knowledge,  
22 they always met with the, with the ADA. I  
23 presume it's -- the reason this isn't, it  
24 says, "Did not meet with ADA" is because he  
25 was no longer the Bureau Chief.

1  
2 I would -- I can't say for sure,  
3 but she would have met with -- she would have  
4 met with, more than likely, the Bureau Chief  
5 to which she was then assigned.

6 Q. Okay.

7 Do you know for a fact that  
8 Miss Hettiarachi met with any Bureau Chief  
9 concerning this evaluation or any other  
10 evaluation?

11 A. I don't know.

12 Q. We're going to place that to the  
13 side.

14 Let me just ask: Were you aware  
15 that Miss Hettiarachi filed a response to this  
16 evaluation?

17 A. I -- maybe it's this page.

18 Q. No, I don't think it's there yet.

19 A. Oh.

20 Q. I'm just asking: Were you aware  
21 that there was one, that there was a response?

22 A. I can't recall.

23 Q. Then I will show it to you.

24 MR. BREWINGTON: This will be

25 Spota 9 for identification, previously

identified as Jablonski 19.

(Plaintiff's Spota Exhibit 9,  
copy of document entitled Response to  
Evaluation by Bureau Chief Edward  
Jablonski, Bates Stamp Number D0309,  
marked for identification.)

(Handing.)

Q. Have you had a chance to look at  
that?

A. Yes.

Q. Are you familiar with this  
document?

A. No.

Q. With regard to the content of  
this document, was any of it familiar to you?

A. No.

Q. Then we'll place that there.

MR. BREWINGTON: I'm going to  
show you the next document which was  
previously marked as Constant 1, which  
we'll identify this as Spota 10 for  
identification.

It's a four-page document  
starting with D0305 through D0308.

(Plaintiff's Spota Exhibit 10,  
copy of four-page document entitled  
Suffolk County District Attorney's  
Office, Assistant District Attorney  
Evaluation, Bates Stamp D0305 through  
D0309, marked for identification.)

(Handing.)

A. Yes.

Q. Have you had a chance to look at  
this document, sir?

A. Yes.

Q. Have you ever seen this document  
before?

A. I may have, but I have no  
specific recollection.

Q. Do you have any recollection of  
speaking to anyone about this document or the  
content of this document?

A. Yes.

Q. Who do you recall speaking to,  
and just tell me what that conversation was?

A. It was with Miss Constant, and  
the conversation was essentially what's  
contained in Page 3, that there was -- that

1  
2 Miss McCormack, the Bureau Chief, had told  
3 Miss Constant that she could not understand  
4 why Miss Hettiarachi was making the  
5 allegations that she was making with respect  
6 to the meeting that they had had, the Bureau  
7 Chief meeting.

8 That Miss Hettiarachi, as I see  
9 it in here, was misinterpreting her comments,  
10 and she just couldn't understand that nor  
11 could she understand why she would want to  
12 leave the Bureau almost immediately. She was  
13 only there a very short period of time.

14 I now see that it was because --  
15 I was sending her there because -- remember I  
16 had said before that it would be for some  
17 reason, they were short people. It says here  
18 other ADAs were shortly to go on maternity  
19 leave.

20 So, that's the reason I sent her  
21 there for that period of time.

22 I know that there was some  
23 concern, and I see it in this evaluation from  
24 Mr. Jablonski, and I recall Miss Constant  
25 telling me that Miss McCormack was complaining

1  
2 that she was not a team player, which  
3 apparently was also something that was of  
4 concern to Mr. Jablonski as well.

5 I don't recall a complaint being  
6 made by somebody, a witness stating that she  
7 felt Miss Hettiarachi was dismissive of the  
8 crime. I don't know that at all.

9 Q. And with regard to your memory at  
10 least of some of the information which is  
11 contained in Spota 10, was there any  
12 indication that a corrective action was going  
13 to be taken; that being discipline or some  
14 other form based on Miss Hettiarachi's  
15 position that she was stating?

16 MS. DONNELLY: Objection.

17 You can answer.

18 A. As far as what's contained in  
19 this document?

20 Q. Yes.

21 A. No.

22 Q. And were you aware of whether or  
23 not Miss Hettiarachi responded to this  
24 document in writing?

25 A. I am not aware.

1  
2 Q. Let me ask you to take a look at  
3 -- by the way, was it a right of an employee  
4 to respond to an evaluation --

5 A. Yes.

6 Q. -- in writing?

7 A. I'm sorry. I shouldn't have  
8 answered.

9 Q. That's okay.

10 MR. BREWINGTON: I'll ask you to  
11 take a look at what was previously  
12 identified as McCormack 8 that we're  
13 going to identify as Spota 11 for  
14 identification.

15 (Plaintiff's Spota Exhibit 11,  
16 copy of seven-page document, Bates Stamp  
17 Numbers D0310 through D316, marked for  
18 identification.)

19 (Handing.)

20 Q. The first thing I'm going to do  
21 is ask you to peruse it briefly, and then I'll  
22 ask a question, and then if you need to do  
23 that, you can do that.

24 A. Peruse it briefly?

25 Q. Yes, just take a quick look at



1  
2 it. Yes, please.

3 A. All right. Okay.

4 It's rather lengthy but...

5 Q. Have you had a chance to briefly  
6 skim over it, sir?

7 A. Yes.

8 Q. Here's my first set of questions.  
9 You indicated that an employee or  
10 Assistant would have a right to respond to  
11 their evaluation; is that correct?

12 A. Yes.

13 Q. Were you aware that  
14 Miss Hettiarachi had supplied a response to  
15 her evaluation as indicated here?

16 A. I was not, no.

17 Q. And were you aware of any process  
18 which existed whereby the evaluators could  
19 submit a reply to the response provided by the  
20 employee?

21 A. I wasn't personally aware, but  
22 it's not -- I don't see any reason why they  
23 couldn't.

24 Q. When an evaluation or a response  
25 to an evaluation comes back -- and now I'm

1  
2 just going to point to just a couple of things  
3 to just generally know how you expected things  
4 to be handled in the office.

5 But the first paragraph of the  
6 response, where it says, "Ms. McCormack's  
7 Evaluation is consistent with her hostility  
8 towards me."

9 Who would be the person or  
10 persons that would see a response such as this  
11 other than Miss McCormack?

12 A. Oh, I'm sure that Mr. Heilig and  
13 Miss Constant saw it.

14 Q. Do you know if --

15 A. I shouldn't say I'm sure.

16 Q. Okay. Let me ask you.

17 Do you know if either  
18 Miss Constant or Mr. Heilig asked  
19 Miss Hettiarachi to explain more what the  
20 hostility was that she felt was being leveled  
21 towards her?

22 A. Do I know?

23 Q. Yes.

24 A. No, I don't know.

25 Q. Did anybody ever tell you that

1  
2 Miss Hettiarachi had written down in her  
3 response that she felt that there was  
4 hostility being leveled towards her?

5 A. I -- not in those terms, no.

6 Q. And this goes on to say,  
7 "Ms. McCormack has constantly shown anger,  
8 dismay and/or annoyances with me."

9 Was that ever related to you that  
10 Miss Hettiarachi had reported that in her  
11 response?

12 A. No.

13 Q. And then it says that,  
14 "Ms. McCormack evaluation is based on me  
15 working for her for approximately two months."

16 Do you see that?

17 A. No.

18 Q. Right in the top.

19 A. Oh, we're still in the first  
20 paragraph?

21 Q. First paragraph, yes.

22 A. I'm sorry.

23 Q. Do you see where it says that?

24 A. Yes, I see that.

25 Q. Okay.

1  
2 Were you aware that  
3 Miss McCormack's evaluation, where she  
4 references all the things that she's speaking  
5 about was over a two-month period?

6 A. Well, I'm aware of it now, but I  
7 was not aware of this at the time.

8 Q. Let me just ask with regard to --  
9 I'm going to ask you to turn to the page  
10 number that has in the bottom right-hand  
11 corner D0312.

12 And this is a document that says  
13 at the top, "Corrections and reply to ADA  
14 Hettiarachi's evaluation response."

15 Do you see that?

16 A. Yes.

17 Q. Do you know who this was written  
18 to?

19 A. No, I don't.

20 It's in response to -- well, the  
21 answer is who it was specifically addressed  
22 to?

23 Q. Yes.

24 A. No.

25 Q. Just go down to response, to

Paragraph Number 2.

A. Yes.

Q. And then in the paragraph above the response I think that Miss McCormack is reiterating what Miss Hettiarachi wrote.

Do you see that? In the italicized section.

MS. DONNELLY: I'm sorry, what's the question?

A. I'm sorry, is it B?

Q. B, yes.

A. I don't follow your question.

Q. You see where she is just repeating what Miss Hettiarachi has written.

A. Yes.

Q. So, she's actually outlining or not outlining, she's writing out what Miss Hettiarachi wrote, and then she's responding to it.

A. Yes.

Q. Do you see that?

A. Uh-huh.

Q. And Miss Hettiarachi indicates in this document that she, "relayed the comments

made by Ms. McCormack to Mr. Jablonski, Ms. Hartman and several ADAs. This was met with laughter and comments such as favors and money were trade to get me transferred from CAB."

Do you see that?

A. Yes.

Q. And the next sentence says, "These initial comments instilled in me a feeling of not being wanted at ECB."

And the next paragraph that I think is the response from Miss McCormack.

Is that how you're reading it?

A. Yes.

Q. It says, "Ms. Hettiarachi's claims of feeling unwanted are baseless."

Was that consistent, making such a judgment on someone's feelings, was that consistent with what you expected of your supervisors?

MS. DONNELLY: Objection.

You can answer.

A. I don't even know how to answer that.

I think what she's -- maybe it's

1  
2 unartfully phrased, but what Miss McCormack is  
3 saying, and I know Miss Constant was telling  
4 me, was that -- she being Miss McCormack --  
5 was perplexed at why Miss Hettiarachi wanted  
6 out of that Bureau when she had just gotten  
7 there.

8 That's the best I can answer.

9 Q. Did you ever have a conversation  
10 with anyone where they told you that  
11 Miss Hettiarachi felt that she was not wanted?

12 A. Well, that's exactly what I just  
13 said.

14 Q. Right.

15 Who told you that, that  
16 Miss Hettiarachi felt that she was not wanted?

17 A. Miss Constant told me that  
18 Miss McCormack was telling her that she could  
19 not understand. She had only been there a  
20 very, very short period of time, and she was  
21 basically indicating that she,  
22 Miss Hettiarachi, felt that she was not  
23 wanted. When, in fact, that was not the case.

24 Q. Well, I'm just going to ask you,  
25 when you say that was not the case --

1

2

A. That's what I was being told.

3

Q. Right.

4

5

A. I don't mean to say that I know  
that to be a fact.

6

Q. Okay. Let's just go back.

7

A. Okay.

8

9

Q. Did you ever ask anybody to speak  
to Miss Hettiarachi to explain what she was  
feeling, and why she felt unwanted?

11

MS. DONNELLY: Objection.

12

You can answer.

13

A. I don't recall.

14

Q. Do you know if anybody ever did?

15

16

A. I don't recall. I don't know I  
should say. That's not fair to say. I just  
don't know.

17

18

19

Q. And this sentence where it says  
that Miss Hettiarachi's claims of feeling  
unwanted are baseless.

20

21

22

Did you ever have anybody  
evaluate --

23

A. Excuse me, where are we?

24

Q. The same place. The bottom of

25

Page 312.



MS. DONNELLY: Go back a page.

MR. BREWINGTON: 312.

MS. DONNELLY: One more page.

THE WITNESS: I'm sorry.

MS. DONNELLY: That's okay.

Q. Did you ever ask anyone to do any type of evaluation or investigation to see whether or not the claim that her feeling unwanted was quote "baseless"?

A. I did not.

Q. In terms of a person's or that being an ADA's position in the Office, would a complaint that someone felt that they were unwanted in the Office from your standpoint require some evaluation?

MS. DONNELLY: Objection.

You can answer.

A. I don't know how to answer that.

I did not know that she was feeling that she was unwanted in the Office.

Q. Well, I think you indicated at some point someone told you.

A. I didn't say in the Office. I said in the Bureau.

1  
2 Q. Well, the Bureau is in the  
3 Office; correct?

4 A. Well, the Bureau is in the  
5 Office, but the Office encompasses everything.

6 And this was dealing only with a  
7 particular Bureau.

8 Q. And when she says that she was  
9 not, she felt that she was not being wanted in  
10 ECB, did anybody ever tell you that she did  
11 not feel that she was wanted in ECB?

12 MS. DONNELLY: Objection.

13 You can answer.

14 A. Where are we now? I'm sorry.

15 MS. DONNELLY: That's okay.

16 Q. In B.

17 MS. DONNELLY: We're back to  
18 where we were before.

19 A. About feeling unwanted or  
20 baseless.

21 MS. DONNELLY: Can you read back  
22 the question, please?

23 THE WITNESS: Yes, please.

24 (Record read.)

25 A. I think I've already answered

1  
2 that, but I'll answer it once again.

3 Miss Constant relayed to me that  
4 Miss McCormack was telling Miss Constant that  
5 Miss Hettiarachi wanted to be transferred out  
6 of the Bureau, and she was perplexed as to why  
7 when she had just gotten there.

8 That's the best answer I can give  
9 you.

10 Q. I understand that. I'm not  
11 dealing with what Miss McCormack's being  
12 perplexed was.

13 My question is: The statement  
14 that Miss Hettiarachi has written here that  
15 she had a feeling of not being wanted, did  
16 anybody speak with you about Miss Hettiarachi  
17 being asked or any further investigation being  
18 done as to why Miss Hettiarachi felt unwanted?

19 MS. DONNELLY: Objection.

20 You can answer.

21 A. I think I have already answered  
22 that.

23 I don't know.

24 Q. But you didn't ask anybody to do  
25 that; did you? To do an investigation or ask

her further questions?

MS. DONNELLY: Objection.

You can answer.

A. Let me just state it once again.

I never was aware, if indeed it actually happened, that she felt she was being -- she was unwanted in the Bureau.

I was aware that she wanted to be transferred to the Major Crime Bureau.

Q. That wasn't --

A. And that -- this -- and I'll say it one more time.

Miss McCormack was perplexed as to why she wanted to be transferred when she had only been there a short period of time.

Q. That's -- perhaps my question was not clear.

For clarity: Did anybody tell you that Miss Hettiarachi had reported that she felt unwanted?

A. No.

Q. Okay. Okay.

And other than having some conversation with Miss Constant about what

Miss McCormack had told her, were you aware of any of the content of these documents that make up Plaintiff's Spota 11 for ID?

A. No.

Q. At any time did anybody ever show you a copy of this document relative to Miss Hettiarachi's employment while she was employed?

A. This document?

Q. Yes, sir.

A. I have no recollection of that at all.

Q. Okay. You can put that to the side.

MR. BREWINGTON: I'm going to show you what's been previously marked as Constant 11, and we'll make this Spota 12 for identification, please.

(Plaintiff's Spota Exhibit 12, copy of document entitled ADA Step Increases July 2013, marked for identification.)

(Handing.)

Q. Mr. Spota, have you had a chance

1  
2 to look --

3 A. Yes.

4 Q. -- at that?

5 A. Yes, I have.

6 Q. Are you familiar with the format  
7 that's presented in this document aside from  
8 all the blackout stuff?

9 A. I am familiar with what it is,  
10 but...

11 Q. Okay.

12 A. But this is probably the first  
13 time I've ever seen this.

14 Q. Okay.

15 What do you understand this to  
16 be?

17 A. It talks about step increases.

18 Q. And what are step increases?

19 A. It's a form of a management plan  
20 that we had in the District Attorney's Office  
21 so that ADAs would -- it was during -- it was  
22 every July 1st I believe. Every ADA -- well,  
23 not every ADA. ADAs would get an increase in  
24 their salary.

25 It was a form of our management

plan.

Q. And who made the decision on who would get steps, and who would not get step increases?

A. The ultimate decision?

Q. Yes.

A. I made that.

Q. And what did you base your ultimate decisions on?

A. For the most part it was the recommendations of the Chiefs or Deputy Bureau Chiefs with respect to the -- whomever the ADA was that they were supervising.

Q. And with regard to Miss Hettiarachi in or about July of 2013 with whom, if anyone, did you speak about whether or not she should or should not get a step increase?

A. Oh, it would have been Miss Kerriann Kelly, Nancy Clifford. I probably -- I don't recall, but I certainly recall speaking to them.

Probably Mr. Chalifoux.

Q. And what was your conversation

1  
2 with either of them, and if you can tell us  
3 who you were speaking with concerning  
4 Miss Hettiarachi and her not receiving a step  
5 increase?

6 A. They felt that she wasn't  
7 deserving of a step increase.

8 Q. Who is the "they"? Who  
9 specifically said that?

10 A. Oh, I can't tell you  
11 specifically. I just don't recall the exact  
12 conversation, and I won't say anything  
13 specific.

14 Q. Okay.

15 A. But I do know that Miss Het --  
16 I'm sorry, Miss Clifford and Miss Kelly in  
17 particular, and more than likely  
18 Mr. Chalifoux, were of the opinion that she  
19 should not get a step increase.

20 Q. Did they tell you why?

21 A. Yes.

22 Q. What did they tell you?

23 A. I cannot, I can't say  
24 specifically, but I can talk in generalities.

25 Q. Just so you know, my question is,



1 I'm looking for facts, not assumptions.

2 A. I can't answer specifically. I  
3 just don't have that recollection  
4 specifically.  
5

6 Q. And were there other ADAs during  
7 this very same time who did not receive step  
8 increases that you're aware of?

9 A. I don't recall.

10 Q. This indicates that there would  
11 have been a step increase of approximately  
12 \$135; is that correct?

13 A. It's hard to say from this, but  
14 -- yes, it does look like it would be \$135.

15 Q. Biweekly?

16 A. Biweekly.

17 Not just \$135.

18 Q. Right. Let's set that document  
19 aside.

20 And this was July of 2013. In or  
21 about that time had you had discussions with  
22 anyone about terminating Miss Hettiarachi?

23 A. At what time?

24 Q. July of 2013.

25 A. Not in July.

1  
2 She had already. I can't recall  
3 when she was terminated, but the answer would  
4 be yes.

5 Q. Okay.

6 Who did you speak with?

7 A. Would have been Miss Clifford and  
8 Miss Kelly and Mr. Chalifoux.

9 Q. And what were your discussions  
10 with any of those individuals specifically, if  
11 you recall?

12 A. I can't answer specifically. I  
13 cannot be specific.

14 Q. And who was it that recommended  
15 that she be terminated, if anyone?

16 A. Well, I would have been  
17 ultimately -- I would have made the ultimate  
18 decision.

19 Q. I understand that.

20 But who was it, if you recall,  
21 that recommended she be terminated?

22 MS. DONNELLY: Objection.

23 You can answer.

24 A. Well, it would have been  
25 Miss Constant, and more than likely

1  
2 Mr. Heilig.

3 Q. And do you recall what their  
4 recommendation was; that being, what did they  
5 say?

6 A. I don't recall specifically, no.

7 Q. Do you recall what the reason was  
8 that Miss Hettiarachi was being terminated?

9 A. There were a number of reasons.

10 The main reason was that she was  
11 deceptive, dishonest to her Bureau Chiefs, her  
12 Bureau Chief I should say, and Deputy Bureau  
13 Chief Clifford on a number of occasions.

14 Q. What Bureau Chief was she  
15 dishonest and deceptive to?

16 A. I'm not finished with the answer.

17 Q. I just want to know which one.

18 A. I'm sorry?

19 Q. Which one was she deceptive and  
20 dishonest to?

21 A. Miss Kelly and Miss Clifford.  
22 May have been Chalifoux. He may have  
23 participated in some of the meetings, but I  
24 can't be -- I don't have a recollection. I  
25 don't want to misspeak on Chalifoux.

1  
2 Q. Who told you that she was  
3 deceptive and dishonest?

4 A. Both Miss Kelly and  
5 Miss Clifford, and Miss Constant relayed that  
6 to me as well. She had been speaking to them.

7 Q. Who told Miss Hettiarachi, if  
8 anyone, that her job was in jeopardy because  
9 she was "deceptive and dishonest"?

10 MS. DONNELLY: Objection.

11 You can answer.

12 A. I just told you.

13 I can't -- I don't recall the  
14 specifics. I can't say that they did or did  
15 not say that to her.

16 Q. Did you ever speak with her to  
17 say, "I'm being told that you're deceptive and  
18 dishonest, what do you have to say about that,  
19 young lady?"

20 A. No --

21 MS. DONNELLY: Objection.

22 You can answer.

23 THE WITNESS: Sorry.

24 A. The answer was no, I did not.

25 Q. Sir, do you know what progressive

1  
2 discipline is?

3 A. Yes.

4 Q. And was that a regular part of  
5 the process within your Office?

6 A. Yes.

7 Q. Was progressive discipline ever  
8 utilized with regard to Miss Hettiarachi --

9 A. Yes.

10 Q. -- if you know?

11 A. Yes.

12 Q. What was the discipline, the  
13 progressive discipline process, that was  
14 engaged concerning her?

15 A. Well, there were a series of  
16 events that occurred while she was in the  
17 Major Crime Bureau itself; some of which I've  
18 already told you about, the fact that she was  
19 deceptive, had lied to Miss Clifford, lied to  
20 Miss Kelly.

21 And there were -- there was --  
22 and I don't know if we can call it  
23 "discipline", but she was --

24 I guess the best way I can  
25 describe it is that they tried their very,

1  
2 very best to deal with some of her inabilities  
3 to understand the Criminal Procedure Law, the  
4 Penal Law, how to deal with cases, how to deal  
5 with witness preparation. Her attitudes  
6 towards other people; which was kind of  
7 consistent from what I see here with the  
8 evaluations of Mr. Jablonski and  
9 Miss McCormack.

10 She was very, very  
11 confrontational towards not only the  
12 secretarial, the support staff, but also other  
13 prosecutors.

14 And they tried their very, very  
15 best. They helped her.

16 There was a particular judge that  
17 made some complaints specifically about her on  
18 a hearing that she participated in. I believe  
19 she conducted the actual hearing.

20 Q. Let's just go back. Let's stop  
21 there for a second.

22 A. Okay.

23 Could I get a glass of water?

24 MR. BREWINGTON: Absolutely.

25 Absolutely.

(Discussion off the record.)

MR. BREWINGTON: Back on.

Q. Mr. Spota, you indicated that a judge had made a specific complaint about Miss Hettiarachi, and how she was conducting a --

A. She had conducted.

Q. -- she had conducted a hearing.

A. Yes.

Q. Do you know which judge that was? If I told you Judge Hahn.

A. I don't know any Judge Hahn.

Q. Judge Kahn.

A. Oh, yes, it could have been Kahn, yes.

Q. Okay.

And do you have a recollection of what Judge Kahn specifically was complaining about?

A. Oh, this is what I -- never complained to me.

Q. All right.

What were you told that Judge Kahn was complaining about? Miss Hettiarachi?

1  
2 A. Well, that she was not prepared  
3 for whatever hearing it was, and did not  
4 understand the fundamental concepts or  
5 elements of the crime.

6 Q. Do you know if Miss Hettiarachi  
7 trained other people in her Bureau about how  
8 to conduct hearings?

9 A. Miss Hettiarachi?

10 Q. Yes.

11 A. No, I don't.

12 Q. By the way, when Judge Kahn  
13 complained, do you know if Judge Kahn  
14 specifically said that she went and singled  
15 Miss Hettiarachi out or that she thought it  
16 was the entire Bureau that needed training?

17 A. That's not --

18 MS. DONNELLY: Objection.

19 A. -- what I was told at all.

20 MR. BREWINGTON: Let me ask you  
21 to take a look at this document which is  
22 going to be Spota 13 for identification,  
23 previously identified as Constant 15.

24 (Plaintiff's Spota Exhibit 13,  
25 17-page document, Bates Stamp Numbers



D00400 through D00416, marked for  
identification.)

(Handing.)

Q. I'm going to point you to a  
couple pages after you get a chance to have  
that document before you, but do you know what  
these are, these pages?

A. Looks like a calendar.

No, I don't know what they are.

Q. They've been previously  
identified in other depositions, but I just  
represent to you that these are notes taken by  
some of the supervisors that you've referenced  
here.

I ask you to look at the Bates  
Stamp page which is D00402, the third page in.

A. Okay.

Q. Now, who was it that told you the  
information about Judge Kahn? Which one of  
the supervisors?

A. It was either Miss Kelly or  
Miss Clifford.

Q. I'll ask you to just take a look  
at that first paragraph which says

1 "miscellaneous."  
2

3 Do you see that?

4 A. Yes.

5 Q. I'll read it, and then I'll ask  
6 you a question.

7 It says, "Judge Kahn asked me to  
8 come to her courtroom one morning, a day after  
9 ADA Hettiarachi had done a SORA hearing in her  
10 part. While she made it clear that it was not  
11 her intention to be critical of ADA  
12 Hettiarachi in particular, she asked whether  
13 if would be possible for MCB Assistants to  
14 receive training from CADVB on how to do such  
15 hearings."

16 Do you see that?

17 A. Yes.

18 Q. Was that ever told to you, that  
19 information in those two sentences I read to  
20 you?

21 MS. DONNELLY: Objection.

22 You can answer.

23 A. Not in those terms, no.

24 Q. So, it was told to you that the  
25 complaint was about Miss Hettiarachi; right?

1

2

A. Yes.

3

4

5

6

Q. It wasn't told to you that the judge made it clear that it was not her intention to be critical of ADA Hettiarachi in particular.

7

8

That was never told to you; was it?

9

10

MS. DONNELLY: Objection.

You can answer.

11

12

A. It was told to me in a different form.

13

14

15

16

Q. Were you told, as it's written here, that the judge was not being "intending to be critical of ADA Hettiarachi in particular"?

17

A. Those exact words, no.

18

Q. Okay.

19

20

21

So, would it be that one of the reasons that you terminated Miss Hettiarachi was because of this complaint?

22

MS. DONNELLY: Objection.

23

You can answer.

24

Q. Is that one of the reasons?

25

A. It was taken into consideration,

but it was not the main reason, no.

And I disagree with your interpretation.

Q. I didn't ask you, sir, if it was the main reason. I asked you if it was one of the reasons.

A. I've answered that question.

Q. And the answer is yes?

A. No, I didn't say the answer was yes.

Q. So, was the complaint that you referenced earlier about Miss Hettiarachi's conducting this hearing one of the reasons for her termination; yes or no?

A. It was --

I can't answer that question yes or no.

Q. Okay.

So, would it be accurate -- and if you can just skim these pages, did you ever see this conglomeration of writings before?

A. (No verbal response.)

Q. Mr. Spota, just so you know, the question I have before you is: Have you ever

1  
2 seen this conglomeration or these documents  
3 before?

4 A. Oh, I'm sorry, no.

5 Q. Okay.

6 So, would it be accurate to say  
7 as far as you know, the first time that you're  
8 actually seeing this set of documents ranging  
9 from D00400 through D00416 is today?

10 A. That's my recollection, yes.

11 Q. And these weren't shown to you  
12 prior to Miss Hettiarachi's termination as far  
13 as you recall; is that correct?

14 A. The document, no.

15 Q. All right. You can put that  
16 aside.

17 And Miss Hettiarachi was  
18 terminated; correct?

19 A. Yes.

20 Q. And you made that decision;  
21 correct?

22 A. Yes.

23 Q. And at that time how many ADAs of  
24 color, that being an African American, an  
25 Asian American, other than white, who were in

the Felony Bureaus?

MS. DONNELLY: Objection.

Could you put a date on it?

MR. BREWINGTON: Sure.

At the time that she was  
terminated.

MS. DONNELLY: He may not recall  
the date that she was terminated.

MR. BREWINGTON: Okay. In July  
of 2013.

MS. DONNELLY: Thank you.

A. In July?

Q. Yes.

A. I just don't --

I'd have to really see the  
roster. We had 190 some odd ADAs.

I can recall some of them, but  
I...

Q. Which --

A. Especially those in the District  
Court Bureau, and I know we did have some.

I don't recall. Let's see --

Q. My question was specifically in  
the Felony Bureaus.

A. Oh, in Felony.

Q. Yes.

A. I'm sorry, I misunderstood.

I'd have to see the roster.

I can think of some of them  
offhand if you want me to name those.

Q. Who were African Americans or  
persons of color who were in the Felony  
Bureaus.

A. Oh, I thought you said Asians.

Q. Persons of color. I consider  
Asians --

A. Oh, there was -- in the Felony  
Bureaus.

Ming Parson. Annie Oh, O-H.  
Lauren Tan. Erin Cho. Sheetal Shetty.  
Sheetal, I think it's her last name, Shetty.  
Sonia Gandy (phonetic). Ros Gray.

I'm trying to think. There's a  
fellow in the Special Investigations Bureau.  
I just cannot think of his name, and I should  
because he's a terrific guy, but I can't think  
of his name.

Q. Well, in 2013 where was

1

2

Miss Gray?

3

A. Appeals.

4

Q. So, she wasn't trying cases;

5

right, in Appeals?

6

A. She would have been doing -- I

7

can't say.

8

Normally they would not do the

9

trials, no. She may have second sat, but I

10

don't know.

11

Q. Had there been any form of

12

disciplinary action taken against

13

Miss Hettiarachi prior to her termination?

14

MS. DONNELLY: Objection.

15

You can answer.

16

A. No.

17

Q. Had Miss Hettiarachi been asked

18

to go for any retraining in her role as an

19

Assistant District Attorney prior to her

20

termination?

21

MS. DONNELLY: Objection.

22

You can answer.

23

A. No.

24

Q. Had Miss Hettiarachi received

25

anything, other than those two evaluations



1  
2 that we saw, write ups for doing something  
3 wrong as an Assistant District Attorney --

4 MS. DONNELLY: Objection.

5 You can answer.

6 Q. -- that you are aware of?

7 A. I'd have to look at these  
8 documents.

9 Oh, that I'm aware of.

10 Q. That you're aware of. Yes.

11 A. No.

12 Q. And had Miss Hettiarachi been  
13 engaged in hiding evidence?

14 MS. DONNELLY: Objection.

15 You can answer.

16 A. I don't know what you mean by  
17 that.

18 Hiding evidence?

19 Q. Yes. You know what Brady  
20 violations are; right?

21 A. Well, that's not -- I thought you  
22 meant physically hiding evidence.

23 Q. I'll get to that in a second.

24 A. No, I don't think so.

25 Q. How about altering documents, had

1  
2 she ever altered any documents that you're  
3 aware of?

4 A. That I am aware of?

5 Q. Yes.

6 A. No.

7 Q. But you're aware of some of your  
8 Assistants that were found to have altered  
9 documents; right?

10 MS. DONNELLY: Objection.

11 You can answer.

12 A. I can only think of one person.

13 Q. Who is that?

14 A. I'm trying to think of her name.

15 Q. If I said Leslie Stevens.

16 A. Yes.

17 Q. And what was Miss Stevens accused  
18 of?

19 A. She had presented a matter before  
20 the Grand Jury, and apparently on one of the  
21 original documents she put something in  
22 pencil.

23 She didn't alter it. She added  
24 to it. She added something that she -- from  
25 her memory she wrote on an original document.

1  
2 Q. And was there a finding by a  
3 court concerning her actions?

4 A. The Grievance Committee made a  
5 finding.

6 Q. Well, other than the Grievance  
7 Committee.

8 Was there a finding by a judge  
9 concerning the actual case that she was  
10 involved with, concerning that case?

11 A. I don't believe that the judge --  
12 I don't recall -- it was Judge Camacho. I  
13 don't recall him making a finding with respect  
14 to that.

15 I think they upheld the Grand  
16 Jury minutes because ultimately there was a  
17 plea of guilty.

18 MR. BREWINGTON: I'm going to ask  
19 you to take a look at what we'll mark as  
20 Spota 14 for identification.

21 (Plaintiff's Spota Exhibit 14,  
22 copy of Newsday article entitled  
23 "Prosecutors in Datre case admit to  
24 adding markings to payrolls" dated  
25 October 6, 2015, marked for

identification.)

(Hanging.)

A. Okay.

Q. So, do you remember a case People versus Datre, D-A-T-R-E?

A. Yes.

Q. And that was the case where you were referring to the pencil markings on the papers?

A. Yes.

Q. And did you learn at some point that the pencil markings had been presented on documents presented to the Grand Jury?

A. Yes, sir. I just mentioned that.

Q. And with regard to that, with regard to Justice Camacho's findings, was there ever a finding by Justice Camacho that the documents that had been presented to the Grand Jury had been altered?

A. There was a finding that they had not been altered.

My understanding.

Q. Your understanding was that --

A. They were not altered.

1

2

Q. That was your understanding?

3

A. Yes.

4

5

And that's what this article  
talks about.

6

Q. Okay.

7

8

Well, with regard to Justice  
Camacho's findings --

9

10

A. What are the findings that you're  
talking about?

11

12

13

14

Q. Well, do you know what the  
findings were concerning those documents, and  
whether or not there was a violation of any  
type?

15

A. I don't believe that there was.

16

Q. Okay.

17

A. That's my recollection.

18

Q. Okay. That's fine.

19

20

21

And by the way, Miss Stevens, at  
the time that you left, was she still employed  
there?

22

A. Yes.

23

Q. Okay.

24

25

And do you recall Justice Camacho  
declaring a mistrial in that case?

1  
2 A. In which Datre case?

3 There were a number of Datre  
4 cases. One was the prevailing wage case. One  
5 was the dumping, I'll call it the dumping  
6 case, the environmental case.

7 Which one are you referring to?

8 Q. It's the one dealing with these  
9 particular documents, the one where there had  
10 been an allegation that she had altered the  
11 documents to the Grand Jury.

12 A. I don't think he --

13 My recollection is he did not  
14 declare a mistrial. My recollection is they  
15 entered pleas of guilty.

16 Q. Okay.

17 A. Am I -- could I go off the  
18 record?

19 Q. No, we're going to stay on the  
20 record.

21 A. Am I incorrect?

22 MS. DONNELLY: You can only  
23 testify to your recollection.

24 Are you done with this document?

25 MR. BREWINGTON: Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
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20  
21  
22  
23  
24  
25

Q. Do you know the name Kurtzrock?

A. Kurtzrock.

Q. Yes.

A. Yes.

Q. Who is that?

A. He was an Assistant District Attorney in the Homicide Bureau.

Q. And at the time that you left, was he still there?

A. No.

Q. And how did he come to leave?

A. I term -- I believe I terminated him.

Q. Are you sure you terminated him, or did you allow him to resign?

MS. DONNELLY: Objection.

You can answer.

A. I did not allow --

Oh, I was about to terminate him. I had his Bureau Chief go down to ask him to come down to my office to tell him, and I told her to warn him in advance that I was terminating him.

He came in, and said he was

1  
2 resigning.

3 Q. Now, this termination warning  
4 that was given to Mr. Kurtzrock, was it ever  
5 given to Miss Hettiarachi?

6 A. I don't know.

7 Q. Did you ever tell anybody to give  
8 that warning to Miss Hettiarachi?

9 A. I don't recall if I did or I did  
10 not.

11 Q. And Mr. Kurtzrock, he had been in  
12 the Office for what period of time; that being  
13 your Office?

14 A. I don't recall.

15 Q. Do you know if he had been in the  
16 Nassau DA's Office before?

17 A. Yes, he was in Nassau before,  
18 yes.

19 Q. And at the time that he resigned,  
20 did you accept his resignation?

21 A. I don't know if he actually  
22 resigned or I terminated him.

23 My recollection is that he came  
24 into the Office.

25 I believe I told him he was being



1 terminated, and he said, "Well, I'm  
2 resigning." That's my recollection.

3 So, whether you call it a  
4 resignation or a termination.

5 Q. I'm --

6 A. Let me finish.

7 Q. I'm not calling it anything, sir.  
8 I'm asking you.

9 A. Well, let me finish my answer  
10 then.

11 Whether you call it a resignation  
12 or a termination, the fact of the matter is in  
13 my mind he was being terminated.

14 Q. Okay.

15 And were you aware of whether or  
16 not Mr. Kurtzrock was allowed to go and pack  
17 his office before he left?

18 A. No, I'm not aware.

19 Q. Do you know if Miss Hettiarachi  
20 was allowed to go and pack her office before  
21 she left?

22 A. I'm not aware.

23 Q. Do you know who Raphael Pearl is?

24 A. Yes.  
25

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25

Q. Who is that?

A. He's an Assistant District Attorney.

Q. At the time that you left, was he still working there?

A. Yes.

Q. And were you aware of his involvement in a case called People versus Hubbard?

A. Hubbard?

I know there was a Hubbard case. I can't say that I know that --

Q. Are you familiar with --

A. -- he prosecuted that case. I don't know.

I believe he did, but I'm not sure.

Q. Were you aware of a finding by the Appellate Division that he was engaged in a Brady violation in a case?

A. Yes.

Q. And what do you know about that violation as it was found by the Appellate Division?

1  
2 A. I believe he was -- I believe it  
3 was a summation to the jury, and he indicated  
4 -- I guess he was vouching for one of the  
5 witnesses, a homicide detective, and the judge  
6 found that there was an internal -- there was  
7 an Internal Affairs case that had been  
8 preferred against that detective, and I think  
9 a Civil case as well.

10 And based upon the fact that  
11 there were those two cases, and he had I  
12 presume vouched or he said something in his  
13 summation about the detective that the judge  
14 felt improper, based upon the fact that there  
15 was an Internal Affairs investigation, and a  
16 Civil matter, and he found that to be a Brady  
17 violation, which I absolutely disagree with  
18 because of the fact that he was cleared of the  
19 Internal Affairs investigation, and the Civil  
20 case I think is pending to this day.

21 Q. With regard --

22 A. So, there was no finding of  
23 liability.

24 Q. Well, is that the standard by  
25 which you judge whether or not an ADA has

1  
2 acted appropriately or inappropriately, the  
3 Civil case?

4 A. No, I'm not --

5 MS. DONNELLY: Objection.

6 You can answer.

7 A. I'm saying -- you're entirely  
8 taking this out of --

9 Q. No, I'm just asking.

10 A. Well, you are entirely taking  
11 what I said out of complete context.

12 Q. No, I was asking you a question.

13 A. You're entirely taking what I  
14 said out of complete context if that's your  
15 question.

16 My answer was that the judge  
17 found that there was a pending Internal  
18 Affairs investigation when, in fact, the  
19 investigation had found that the detective had  
20 been cleared, and there was -- the judge was  
21 saying that there was a Civil matter against  
22 him when, in fact, the Civil case had never,  
23 there had been a determination in the Civil  
24 case which was pending, and I believe is still  
25 pending, that there was any responsibility on

1  
2 the part of the detective, civilly or  
3 criminally or otherwise.

4 Q. And you disagreed with the  
5 judge's finding?

6 A. Yes.

7 Q. And you disagreed with the  
8 finding of the Appellate Division?

9 A. Yes.

10 Q. So, with regard to those  
11 disagreements that you had concerning those  
12 violations which were determined by two judges  
13 or at least two courts --

14 A. Yes.

15 Q. -- can you tell me, sir, what  
16 retraining happened with regard to Mr. Pearl?

17 MS. DONNELLY: Objection.

18 You can answer.

19 Q. If any.

20 A. I don't recall what training,  
21 retraining there was.

22 Q. What discipline was meted out  
23 against Mr. Pearl, if any?

24 A. We referred it to our Committee  
25 on Professional Conduct for them to --

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Q. I understand you did that.

My question was --

A. Well, I didn't mention that. I don't know how you know that.

Q. No, I understand. You just said it.

A. No, I didn't just say it. You just said it.

Q. My question to you, sir, was: What discipline was meted out against him, if any?

A. I referred it to the Committee on Professional Conduct for them to make a determination upon completion.

Their determination, they would come back to me, and I would make the appropriate discipline if, indeed, they recommended it or I felt it was necessary.

Q. Okay. So, back to my question. What discipline was meted out against him?

A. They never reached a -- while I was in office they did not reach a determination.

1  
2 Q. So, at this point would it be  
3 fair to say that at the time that you left  
4 Mr. Pearl had not been subjected to any  
5 discipline --

6 A. That's correct.

7 Q. -- in the Office?

8 A. That's correct.

9 Q. Okay.

10 And he's still employed there, at  
11 the time that you left?

12 A. Yes.

13 Q. Was he ever asked to resign?

14 A. No.

15 Q. Was he ever told that his job was  
16 in jeopardy?

17 A. You're talking about by me now?

18 Q. Yes.

19 A. No.

20 Q. And Mr. Pearl, what was his race,  
21 please?

22 A. He's Caucasian.

23 Q. And Mr. Kurtzrock, what was his  
24 race?

25 A. Caucasian.

1

2

3

Q. And Miss Stevens, what is her  
race, please?

4

A. Caucasian.

5

6

Q. And do you know the name Sharyn  
Gitter?

7

A. Sharyn Gitter-Goldstein, yes.

8

Q. How do you know that name?

9

A. She's a prosecutor in the Office.

10

11

12

Q. Do you know if she was ever  
transferred from a Felony Bureau back to a  
District Court Bureau?

13

14

A. To a District Court Bureau? She  
was -- the answer is no.

15

16

17

Q. Do you know if she was  
transferred from a Felony Bureau to a Bureau  
of a lesser renowned?

18

MS. DONNELLY: Objection.

19

A. No.

20

MS. DONNELLY: You can answer.

21

THE WITNESS: Sorry.

22

A. No.

23

24

25

Q. Was she ever transferred from a  
Bureau that would normally be a higher Bureau  
to a lower Bureau?



MS. DONNELLY: Objection.

You can answer.

A. I would answer that no.

Q. Do you know of any transfers that happened with regard to Miss Gitter?

A. Yes.

Q. What transfers are you aware of concerning Miss Gitter?

A. She went from the -- she was transferred from the Child Abuse & Domestic Violence Bureau to a unit of that Bureau, the Domestic Violence Unit.

Q. Does the Domestic Violence Unit handle felonies?

A. Yes.

Q. And where is that located?

A. Hauppauge.

I'm sorry, I misspoke. Central Islip.

Q. And at the time of that transfer --

And by the way, Joshua Bengis, B-E-N-G-I-S.

A. Yes.

1  
2 Q. Do you know that name?

3 A. Yes.

4 Q. Who is that?

5 A. A prosecutor.

6 Q. Was he ever transferred from one  
7 unit to another; that being with regard to the  
8 Child Abuse & Domestic Violence Bureau to  
9 another Bureau?

10 MS. DONNELLY: Objection.

11 A. No.

12 Q. Was he ever transferred out of  
13 that Bureau at all?

14 A. Yes.

15 Q. From where to where?

16 A. From the Child Abuse & Domestic  
17 Violence Bureau to the Domestic Violence Unit  
18 which is a part of the Child Abuse & Domestic  
19 Violence Bureau.

20 Q. So, similar to Miss Gitter; is  
21 that correct?

22 A. Yes.

23 Q. And why were they transferred?

24 A. Miss Gitter requested it, the  
25 transfer.

1  
2 And Mr. Bengis, I can't recall  
3 why he was transferred.

4 I think -- I just don't recall  
5 right now.

6 Q. And when they were transferred to  
7 the Domestic Violence Unit were they able to  
8 keep their senior titles; if you know?

9 A. Yes.

10 MS. DONNELLY: Objection.

11 You can answer.

12 A. Yes.

13 Q. Do you know the name --

14 By the way, Miss Gitter and  
15 Mr. Bengis, what are their races, please?

16 A. Caucasian.

17 Q. Were they ever subject to any  
18 suggestion that they would be terminated from  
19 you?

20 A. No, not at all.

21 Q. Do you know Maria Troulakis,  
22 T-R-O-U-L-K-I-S?

23 A. Troulakis.

24 Q. Troulakis?

25 A. Yes.

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Q. Who is that?

A. She's a prosecutor.

Q. Was she ever transferred from one unit to another that you're aware of?

A. From one unit to another, no.

Q. Was she ever transferred from the Economic Crime Bureau back to the District Court Bureau?

A. I don't believe so, no.

Yeah, let me just clarify that. That may be so. I can't recall.

Q. If it was so, just assuming for purposes of this question, was going from the Electronic Crime Bureau back to the District Court Bureau the normal --

A. Progression.

Q. -- progression?

A. Well, it's the Economic Crime Bureau.

Q. The Economic Crime Bureau. I'm sorry.

A. That's okay.

No.

Q. Would that be considered a

1  
2 demotion?

3 A. No.

4 Q. Why not?

5 A. Because she -- we didn't -- a  
6 demotion would be some pay. I would think it  
7 would have something to do with pay.

8 But more importantly she was  
9 transferred back because we felt that she was  
10 a very fine prosecutor, continues to be a fine  
11 prosecutor.

12 She needed more trial experience.  
13 She's a very hard worker, and I think very  
14 highly of her.

15 Q. Okay.

16 And with regard to her being  
17 transferred to the District Court Bureau, that  
18 was so she could get more experience or get  
19 better training; is that right?

20 MS. DONNELLY: Objection.

21 You can answer.

22 A. She lacked, in my opinion and in  
23 the -- it was really in the opinion of her  
24 supervisors that she was a hard working  
25 prosecutor, and deserved to be in the Felony

1 Bureau, but needed just some more trial  
2 experience.  
3

4 She went to the District Court  
5 Bureau. Tried a number of cases in a short  
6 period of time, and was transferred -- I  
7 believe I put her in the Major Crime Bureau.

8 Q. When she was in the Economic  
9 Crime Bureau, did she conduct hearings?

10 A. I said before I'm not sure if it  
11 was a transfer back from the Economic Crime  
12 Bureau.

13 Q. Okay.

14 When she was in the Felony  
15 Bureau, did she --

16 A. Yes.

17 Q. -- conduct hearings?

18 MS. DONNELLY: Objection.

19 You can answer.

20 A. I can't tell you exactly.

21 That would be a question better  
22 put to her Bureau Chiefs or Deputy Bureau  
23 Chiefs.

24 Q. The transfer back to the District  
25 Court Bureau is something that you approved;

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is that correct?

A. I approved it, yes.

Q. So, with regard to her transfer,  
you said that she needed more experience in  
conducting trials.

A. That's what the Bureau Chiefs  
told me.

Q. Okay.

And with regard to that, you  
figured out a way for her to get that  
experience; right?

A. Did I --

Q. You figured out a way for her to  
get that experience.

A. I figured out a way.

Q. Was that, the fact that she may  
have had or needed more trial experience, was  
that something that you held against her?

MS. DONNELLY: Objection.

You can answer.

A. I didn't -- I don't even know  
what you mean by that.

Q. Sure.

You didn't find that to be

1 something, if she needed more training in that  
2 area, something that you held against her; is  
3 that correct?  
4

5 MS. DONNELLY: Objection.

6 You can answer.

7 A. I didn't hold anything against  
8 her.

9 Q. Right.

10 But you did hold a report from  
11 Judge Kahn, allegedly, that Miss Hettiarachi  
12 had problems in conducting a hearing against  
13 Miss Hettiarachi; correct?

14 MS. DONNELLY: Objection.

15 You can answer.

16 A. You're entirely misunderstanding.  
17 You may recall before -- let me  
18 finish.

19 Q. No, I'm just going to ask you --

20 A. No, no, no.

21 I am going --

22 MS. DONNELLY: You can't restrict  
23 his answer.

24 MR. BREWINGTON: It called for a  
25 yes or no answer.



1  
2 MS. DONNELLY: No, you cannot  
3 restrict his answer.

4 MR. BREWINGTON: I am going to --  
5 it called for a yes or no answer.

6 MS. DONNELLY: You can't restrict  
7 his answer.

8 Q. Can you answer it yes or no?

9 MS. DONNELLY: You may not like  
10 the answer --

11 A. I am going to answer it --

12 Q. Can you answer it yes or no?

13 MS. DONNELLY: You may not like  
14 the answer, but you can't restrict his  
15 answer.

16 You can answer it however you  
17 want.

18 Q. Can you answer it yes or no  
19 first?

20 And then you can answer it any  
21 way you want.

22 A. What I said before and you --  
23 that there were a series of events with  
24 respect to your client, and it was not just  
25 the SORA hearing.

1  
2 Q. I agree that you said that  
3 before.

4 Now, here's my question.

5 A. Okay.

6 Q. Did you hold the issue of the  
7 SORA hearing as one of the reasons that led to  
8 Miss Hettiarachi's termination; yes or no?

9 MS. DONNELLY: Objection.

10 You can answer.

11 A. I can't answer that yes or no  
12 because there was further matters pertaining  
13 to the SORA matter that were brought to my  
14 attention.

15 Q. What were they?

16 A. That they had --

17 First of all, I was told that the  
18 judge had told either Miss Clifford or  
19 Miss Kelly or both of them that she did not  
20 want to single out Miss Hettiarachi, but it  
21 was, indeed, the reason for the hearing that  
22 she was woefully --

23 You're looking at me?

24 Q. I am. I'm going to ask you a  
25 question because you just said before that you

1  
2 were never told that she didn't want to single  
3 out Miss Hettiarachi.

4 A. I never said that.

5 Q. Very well. Okay.

6 You want to finish your answer.

7 A. Yeah.

8 That she did not want her to be  
9 singled out, but that she required retraining,  
10 and it was a suggestion made either amongst  
11 the judge and the prosecutors, or just the  
12 prosecutors that there would be a training  
13 session, and that during the course of the  
14 training session Miss Hettiarachi either  
15 wasn't paying attention or was sleeping, and  
16 she felt that the session was of no value to  
17 her at all.

18 That's what I wanted to say.

19 Q. So, you're saying that that was  
20 the session that Judge Kahn, the session  
21 you're referring to was the one that resulted  
22 as a result of Judge Kahn speaking to the  
23 supervisor?

24 A. Yes.

25 Q. Sir, did you ever read the

determination by the State Division of Human Rights in this case?

A. Well, I'm sure I did.

Q. And do you know what the determination was of the State Division of Human Rights?

A. The determination was that they could -- your client could go to a hearing.

Q. Well, do you know what the determination was?

A. I'd have to see the document that you're looking at.

MR. BREWINGTON: Sure.

Make this into Spota 15 for identification, please.

(Plaintiff's Spota Exhibit 15, copy of seven-page document entitled Determination After Investigation, marked for identification.)

(Handing.)

Q. Does this help refresh your recollection as to what the determination was by the State Division of Human Rights concerning Miss Hettiarachi's complaint made

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to them?

A. Yes.

Q. And what was that finding, that determination?

A. That the Division has jurisdiction of the matter, and that probable cause exists to believe that the Respondent has engaged in or is engaging in the unlawful discriminatory practice complained of.

Q. And when did you first learn -- I'm finished with that document. Thank you.

When did you first learn that Miss Hettiarachi was complaining about discrimination; if you did?

A. When she first made the complaint.

MS. DONNELLY: Off the record.

(Discussion off the record.)

Q. With regard to your style as a District Attorney in the County of Suffolk, did you consider yourself as a hands-on manager?

A. For the most part, yes.

Q. Do you know the name Cameron

Kelly?

A. Yes.

Q. Who is Cameron Kelly?

A. Cameron Kelly was a prosecutor.

Q. Male, female?

A. Female.

Q. What was Miss Kelly's race?

A. Oh, Cameron Kelly.

I'm sorry, I don't know who that  
is.

Q. Were you aware of a lawsuit filed  
by a Cameron Kelly?

A. No.

Q. Do you know a person by the name  
of Lippits, L-I-P-P-I-T-S?

A. Oh, yes.

Q. Who is that?

A. Ronald Lippits was a prosecutor.

Q. Okay.

And what was his race?

A. Caucasian.

Q. Was he allowed to resign?

A. I believe I terminated him. I  
don't recall.

1  
2 Q. Do you know what the reason was  
3 for you terminating him?

4 A. He may have resigned.

5 I can't recall if he -- which of  
6 the two it was.

7 Q. At the time that he left service  
8 in the District Attorney's Office, were there  
9 allegations against him?

10 A. Yes.

11 Q. What were the allegations?

12 A. That he had made inappropriate  
13 comments to one of the prosecutors in the  
14 Office.

15 Q. And who was that?

16 A. Cameron Kenny.

17 Q. And was Miss Kenny terminated?

18 A. Yes.

19 Q. For what?

20 A. She was giving information to the  
21 -- some defense attorneys.

22 Q. Okay.

23 A. Confidential information.

24 Q. And Miss Kenny, what was her  
25 race?

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A. Caucasian.

Q. And with regard to Mr. Lippits, when was he terminated; do you know? Or when did he leave the Office?

A. I don't recall.

Q. And, sir, with regard to your management style, is termination an act of last resort --

A. Yes.

Q. -- for ADAs?

A. Yes.

If there's nothing else -- yes.

MR. BREWINGTON: I'm going to ask you to take a look at this document which we will mark as Spota 16 for identification, please.

(Plaintiff's Spota Exhibit 16, copy of letter dated January 10, 2013, marked for identification.)

(Handing.)

Q. Have you had a chance to look at that?

A. Yes.

Q. Is that your signature that's on



1  
2 this document?

3 A. Yes.

4 Q. Okay.

5 On July 2nd, 2013 had you made  
6 the determination that you were going to  
7 terminate Miss Hettiarachi already?

8 A. I don't recall the date that I  
9 made that determination.

10 Q. Well, do you recall when it was  
11 that you made the determination that she would  
12 be terminated?

13 A. I just said I don't recall.

14 Q. And with regard to this letter  
15 which indicates that you were not going to  
16 give her, that she would not be receiving a  
17 step increase in her salary for that year, was  
18 that determination made at or about the same  
19 time, whenever it was, that you were going to  
20 terminate her?

21 MS. DONNELLY: Objection.

22 You can answer.

23 A. I don't recall the date.

24 Q. At the time that you made this --  
25 I'm not asking you the date, I'm asking you

whether or not it's at or about the same time.

A. I don't recall. I can't tell you.

If I knew the date I could tell you, but I don't know.

Q. Well, do you have a recollection of having the conversation about not giving Miss Hettiarachi her step increase?

A. Yes.

Q. At or about that time were you having conversations with supervisors about her termination?

A. No.

Q. When did those conversations take place in relation to your decision not to give her a step increase?

MS. DONNELLY: Objection.

You can answer.

A. I wish I could answer that question. I just don't recall.

Q. And at the time that Miss Hettiarachi was terminated, how long had she been working in the Bureau that she was terminated from?

1  
2 A. I'd have to look back at these  
3 documents (indicating).

4 Q. Feel free.

5 A. I would say five months.  
6 I'm using this document  
7 (indicating) as...

8 Q. And of those five months, how  
9 much of that time was she out on sick leave;  
10 if you know?

11 A. None. No time.

12 MR. BREWINGTON: Okay.

13 We'll take a break, and I'll see  
14 if I have anything else.

15 MS. DONNELLY: Thanks.

16 (Discussion off the record.)

17 Q. With regard to yourself, have you  
18 taken any training with regard to the handling  
19 of complaints of discrimination?

20 A. Have I undertaken?

21 Q. Yes.

22 A. Yes.

23 Q. When and where?

24 A. It was a number of years ago,  
25 Upstate New York.

1  
2 And I recently -- although I did  
3 not attend this -- I recently had a training  
4 session that was sponsored by Amistad. Jay  
5 Stewart Moore and Kevin Satterfield.

6 My daughter gave birth -- I had  
7 to go to Tennessee where one of my children  
8 lives, and I could not attend it.

9 I had set it all up, and then at  
10 the last minute I just couldn't attend it.

11 Q. And how many years ago was that,  
12 approximately, the one that you went to --

13 A. Oh, this year.

14 Q. No, the one --

15 MS. DONNELLY: No. He's  
16 referring to -- sorry.

17 MR. BREWINGTON: That's all  
18 right. Thank you.

19 Q. The one that you said was years  
20 ago.

21 A. That was a number of years ago.

22 Q. And the one that you could not  
23 attend, that was on implicit bias; correct?

24 A. Yes.

25 Q. And that was held after the

1  
2 filing of this complaint; correct?

3 A. Yes.

4 Q. And with regard to that training,  
5 did you ever review any of the materials, if  
6 there were materials?

7 A. I did not, no.

8 Q. And do you know what implicit  
9 bias is?

10 A. You know, let me --  
11 I don't know if there were  
12 materials.

13 I spoke to Mr. Moore or perhaps  
14 Mr. Satterfield, one of the two about it after  
15 the fact, and I spoke to my Chief Assistant  
16 about it.

17 I don't recall reviewing any  
18 materials. That's not to say that there  
19 weren't materials. I just don't recall.

20 Q. Are you aware of what the term  
21 "implicit bias" refers to?

22 A. Yes.

23 Q. What do you understand it to  
24 mean?

25 A. It's a bias that we may very well

1  
2 have, but not be aware of.

3 That's my understanding.

4 Q. And at any time after the filing  
5 of Miss Hettiarachi's complaint to the State  
6 Division of Human Rights, did you as the  
7 District Attorney ask anyone to conduct an  
8 investigation concerning her complaint?

9 A. Yes.

10 Q. Who did you ask?

11 A. Miss Donnelly.

12 Q. Okay.

13 And as a result of that request,  
14 was there a report issued; if you know?

15 A. By Miss Donnelly?

16 Q. Yes.

17 A. A report to us you mean, the DA's  
18 Office?

19 Q. I'm asking after you learned that  
20 there was a complaint of discrimination  
21 whether or not there was a report issued  
22 concerning Miss Hettiarachi's complaint of  
23 discrimination, not in preparation for  
24 defense, but whether or not there was an  
25 evaluation of her complaint, and whether there

1  
2 was a report of whether her report was  
3 actually evaluated?

4 A. The answer to that -- and I don't  
5 know if I recall the report -- it was the  
6 result of the investigation conducted by  
7 Ms. Donnelly.

8 She responded to, in a lengthy  
9 statement, to the Division of Human Rights.

10 Q. And now let me clarify my  
11 question in light of that answer.

12 Other than responding to the  
13 complaint, to the State Department of Human  
14 Rights defending against the complaint, was  
15 there any other investigation done within your  
16 Office to see if Miss Hettiarachi had been or  
17 had not been discriminated against?

18 A. The only investigation was the  
19 one that Miss Donnelly conducted.

20 MR. BREWINGTON: I have no  
21 further questions.

22 Thank you.

23 MS. DONNELLY: Thank you.

24 (Time noted: 4:35 p.m.)  
25

## A C K N O W L E D G M E N T

STATE OF NEW YORK     )  
                              : ss  
COUNTY OF                )

I, THOMAS J. SPOTA, hereby certify  
that I have read the transcript of my  
testimony taken under oath in my deposition of  
January 12, 2018; that the transcript is a  
true, complete and correct record of my  
testimony, and that the answers on the record  
as given by me are true and correct.

\_\_\_\_\_  
THOMAS J. SPOTA

Signed and subscribed to before  
me, this                   day  
of                               , 2018.

\_\_\_\_\_  
Notary Public, State of New York



## -----I N D E X-----

WITNESS	EXAMINATION BY	PAGE
THOMAS J. SPOTA	MR. BREWINGTON	5

## -----EXHIBITS-----

PLAINTIFF'S SPOTA	FOR I.D.
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- |   |  |    |
|---|--|----|
| 1 | Copy of two-page document,<br>first page being a letter<br>dated April 25, 2006 from<br>Jerry W. Matejka to Tom<br>Spota and second page being<br>an Inter-Office Communication,<br>Bates Stamps D0140 and D0141 | 22 |
| 2 | Copy of letter dated March 8,<br>2011 from Diane Stankewicz,<br>Bates Stamp Number D0092   | 24 |
| 3 | Copy of document entitled<br>Inter-Office Communication<br>Suffolk County District<br>Attorney's Office, dated<br>October 2, 2012, Bates Stamp<br>Number D0080   | 26 |
| 4 | Copy of two-page letter dated<br>January 8, 2013   | 31 |
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## C E R T I F I C A T E


STATE OF NEW YORK     )  
                              ) ss.:  
COUNTY OF NASSAU     )

I, DEBORAH ROZEA, a Notary Public  
within and for the State of New York, do  
hereby certify:

That THOMAS J. SPOTA, the witness  
whose deposition is hereinbefore set  
forth, was duly sworn by me and that  
such deposition is a true record of the  
testimony given by such witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage; and that I am  
in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have  
hereunto set my hand this 17th day of  
January, 2018.



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DEBORAH ROZEA

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\*\*\* ERRATA SHEET \*\*\*  
REALTIME REPORTING, INC.  
124 East Main Street, Suite 202  
Babylon, New York 11702  
516-938-4000

NAME OF CASE: HETTIARACHCHI VS. SUFFOLK COUNTY  
DATE OF DEPOSITION: JANUARY 12, 2018  
NAME OF WITNESS: THOMAS J. SPOTA

FROM	TO	REASON
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THOMAS J. SPOTA

Subscribed and sworn before me  
this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
(Notary Public)      My Commission Expires: \_\_\_\_\_